



MONTANA STATE HOSPITAL POLICY AND PROCEDURE

GUARDIANSHIP

Effective Date: December 11, 2015

Policy #: TX-07

Page 1 of 4

- I. PURPOSE:** To provide guidance for obtaining a guardianship when a physician has determined a patient needs assistance making informed decisions about their health and safety.
- II. POLICY:** Individuals who are determined by a physician to be an incapacitated person will have a petition filed with the court requesting the appointment of a guardian.
- III. DEFINITIONS:**
 - A. Physician: A doctoral level, licensed medical care provider.
 - B. Guardian: A person who has been given decision making authority for an incapacitated person pursuant to testamentary or court appointment.
 - C. Full Guardian: A guardian who possesses all the legal duties and powers enumerated in §72-5-321 MCA.
 - D. Limited Guardianship: A guardian who possesses fewer than all of the legal duties and powers of a full guardian and whose rights, powers, and duties have been specifically enumerated by the court.
 - E. Incapacitated Person: Any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other cause to the extent that they lack sufficient understanding or capacity to make or communicate responsible decisions concerning themselves or which cause impairment in the person's judgment to the degree that they are incapable of making a rational decision with respect to their need for treatment.
 - F. Guardianship Coordinator: The Admissions Program Manager or designee is responsible for supervising the guardianship procedure at MSH.
- IV. RESPONSIBILITIES:**
 - A. MSH Physicians: Assess patients at Montana State Hospital (MSH) regarding their capacity to make responsible decisions to promote and protect their wellbeing; write reports justifying guardianship; and testify in guardianship proceedings.

- B. MSH Social Workers – Serve as a visitor in guardianship proceeding; write and file visitors report (original goes to court with copies to AMDD attorney and the board of visitors). Social worker is required to follow state statute §72-5-313 and 72-5-315 MCA.
- C. Admissions Program Manager or designee –Supervise the guardianship program at MSH by filing petitions for guardianships as requested and working with the Addictive and Mental Disorders Division (AMDD) Legal Unit of the Department of Public Health and Human Services (DPHHS) to ensure legal requirements are met.

V. PROCEDURE:

A. Initiation of Procedure for **Emergency Temporary Guardianship:**

- 1. The physician will determine if the patient is incapacitated and lacks the ability to give informed consent for health care.
- 2. If it is determined that an emergency situation exists, the physician will prepare a report for the court which will include the following:
 - a. Patient's name, hospital number, unit.
 - b. Reason guardianship is being sought.
 - c. Brief mental status examination.
 - d. The nature and degree of the alleged incompetency.
 - e. Specific areas of protection and assistance requested.
 - f. Type of guardianship requested (emergency, limited, full).

The physician's report must state facts that clearly demonstrate an emergency situation exists and that immediate action is required. The report will be forwarded to the Admissions Program Manager who will complete the Guardianship Information Sheet and forward it to the AMDD Legal unit.

- 3. The patient's social worker will contact persons in order of priority to determine who will serve as guardian. First priority must be given to the person or entity requested by the patient. Persons having next priority for appointment as guardian are as follows:
 - a. Spouse of incapacitated person.
 - b. Adult child of incapacitated person.
 - c. Parent of incapacitated person.
 - d. A relative who has an interest in the welfare of the incapacitated person.

- e. A friend who has demonstrated a sincere, long-standing interest in the incapacitated person.
 - f. A private association or nonprofit corporation with a guardianship program.
 - g. A participant in the MSH Volunteer Guardian Program.
 - h. Director of Addictive & Mental Disorders Division, Department of Public Health & Human Services or designee.
4. The social worker will forward information to the Admissions Program Manager containing the name, address, and telephone number of the person who is willing to accept appointment as guardian. Also included in the information will be the names and addresses of spouse, adult children, and parents.

B. Initiation of procedure for **Permanent Guardianship**:

1. If a guardianship is determined to be necessary, but an emergency situation does not exist, the procedure shall be the same as for an Emergency Temporary Guardianship, except that the physician's report will not be provided to the Admissions Program Manager until notice of appointment as examining physician is received from the court and there will be a court hearing. At the time the physician is appointed to examine the patient the scheduled hearing date will also be provided to the physician.

C. The petition for guardianship:

1. The AMDD Legal Unit will prepare and file the petition for appointment of a guardian of the alleged incapacitated patient. The petition will provide the court with all information necessary to determine the issue of competency. The following legal documents must accompany the petition.
 - a. Order appointing a physician.
 - b. Order appointing an attorney for the alleged incapacitated person.
 - c. Order appointing a Visitor.
 - d. Order fixing time and place of hearing.
 - e. The physician's report (only for emergency guardianships).
2. The petition must be signed by the petitioner (Admissions Program Manager) and notarized. A copy of the petition must be sent by mail or hand-delivered to the alleged incapacitated person and the attorney for the person and to the clerk of court.
3. The Admissions Program Manager will locate a Visitor which is typically the social worker assigned to serve the patient

4. If the guardianship is an emergency guardianship, the AMDD Legal Unit will make arrangements to have the petition and report brought before the district court judge in order that an immediate decision regarding the temporary guardianship can be made. This action will occur as soon as possible after the petition and the physician's report are completed. This may occur by facsimile with the original petition mailed.
5. The petition for guardianship will be faxed and/or mailed to the AMDD Legal Unit of DPHHS.

D. Hearings in the Case of a Petition for Permanent Guardianship:

1. The court order fixing time and place for a non-emergency guardianship hearing will be filled out by the AMDD Legal Unit of DPHHS and sent to District Court for filing.
2. The examining physician and Visitor appointed by the court will be notified by the Admissions Program Manager of their appointments and the date of the hearing at least five days prior to the hearing. Upon notification, each will complete and submit an evaluation report to the Admissions Program Manager for forwarding to the AMDD Legal Unit and filing in district court.

E. Post-Hearing Notifications in the Case of a Petition for Permanent Guardianship:

1. The Admissions Program Manager will send the signed and certified court order appointing a guardian to the patient's medical record. Copies of the court order will be sent to the attorney for the incapacitated person, and to the AMDD Legal Unit of DPHHS.. The appointed guardian will also receive a copy. Letters of Guardianship will be issued to the appointed guardian for signature and filing with the court.

VI. REFERENCES: Title 72, Chapter 5, Parts 1-3, MCA

VII. COLLABORATED WITH: Clinical Services Director; Legal Unit of the Addictive and Mental Disorders Division, Medical Director, Social Workers, Admissions Program Manager, and the Social Work Program Manager.

VIII. RESCISSIONS: #TX-07, *Guardianship* dated January 20, 2012; #TX-07 *Guardianship* dated May 2, 2008; #TX-07, *Guardianship* dated June 6, 2003; #TX-07, *Guardianship* dated February 14, 2000; TX-06-96-R - *Guardianship* dated October 8, 1996.

IX. DISTRIBUTION: All hospital policy manuals.

Montana State Hospital Policy and Procedure

GUARDIANSHIP

Page 5 of 5

- X. ANNUAL REVIEW AND AUTHORIZATION:** This policy is subject to annual review and authorization for use by either the Administrator or the Medical Director with written documentation of the review per ARM § 37-106-330.
- XI. FOLLOW-UP RESPONSIBILITY:** Clinical Services Director
- XII. ATTACHMENTS:** Attachment A – Guardianship Information Sheet

_____/____/____
John W. Glueckert Date
Hospital Administrator

_____/____/____
Thomas Gray, MD Date
Medical Director

GUARDIANSHIP INFORMATION SHEET

This document is required for all guardianships, including emergency ones.

FAX this document to the Office of Legal Affairs at (406) 444-9744

Contacts: Susan Callghan 444-9129 or Paulette Kohman at (406) 444-1258,

1. Petitioner's Full Name:
2. Patient's Full Name:
Date of Birth:
Address:
Diagnosis:
Nature of Disability (e.g., symptoms, severity, limitations):
3. Proposed Guardian's Full Name:
Relationship to Patient:
Residence Address:
Mailing Address (if different):
Phone:

Which of the following priorities apply to the proposed guardian (mark an "x" in front of appropriate section):

- (a) a person, association, or private, nonprofit corporation nominated by the incapacitated person if the court specifically finds that at the time of the nomination the incapacitated person had the capacity to make a reasonably intelligent choice;
- (b) the spouse of the incapacitated person;
- (c) an adult child of the incapacitated person;
- (d) a parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;
- (e) any relative of the incapacitated person with whom the incapacitated person has resided for more than 6 months prior to the filing of the petition;
- (f) a relative or friend who has demonstrated a sincere, longstanding interest in the welfare of the incapacitated person;
- (g) a private association or nonprofit corporation with a guardianship program for incapacitated persons, a member of the private association or nonprofit corporation approved by the association or corporation to act as a guardian for the incapacitated person, or a person included on an official list of the association or organization as willing and suitable to act as guardian of incapacitated persons;
- (h) a person nominated by the person who is caring for the incapacitated person or paying benefits to the incapacitated person.

4. Proposed Co-Guardian's Full Name (if applicable):
Relationship to Patient:
Residence Address:
Mailing Address:
Phone:

Enter appropriate letter from priority list above (e.g., "(b)"):

Should EITHER guardian be able to act independently or should they BOTH be required to concur to give informed consent (default will be that they act independently):

5. Type of Guardianship/Conservatorship (mark an "x"):

Temporary Guardian: *Fax and mail original of physician's statement supporting emergency guardianship and summarize reason here:*

Permanent Limited Guardian: Unless others are requested, the powers will be:

- Health Care: Provide timely and informed consent where required for necessary medical and psychiatric care and administration of prescribed medication, including psychotropic medication
- Placement: Provide timely and informed consent for residential, medical or other placement, subject to the limitations of §§ 72-5-321 and 72-5-322, MCA;
- Advocacy: Assert and protect the rights and best interests of the patient; and
- Access to Information: Received or authorize disclosure of any information regarding the patient, including financial, health care, and other information and records necessary to carry out the above powers.

Include simple financial management powers in either of the above, e.g., to apply and/or act as payee, manage specific bank accounts, or simple real property issues. Specify details in # 8 below.

Permanent Full Guardian: This should be reserved for patients who are not expected to be able to participate in any meaningful way in life and treatment planning decisions. It includes financial matters.

Conservatorship: Does not include health care decisions, but it is needed for intensive management of complex financial and property issues. Specify details in # 8 below.

Additional, special, or different powers needed. Specify here:

6. Name and mailing address of the following (enter "none" as needed):

Spouse:

Parents:

Adult children:

Any person currently serving as guardian, conservator, or has care and custody:

If none of the above are known, closest adult relative:

7. Name and address of attorney (includes attorney listed in commitment documents or any known attorney that the patient or family transacts with):

Name and address of "responsible person" or "friend of respondent" from commitment proceedings:

Name and address of any known advocate (e.g., DRM):

8. What property or assets does the patient have?
Real property (describe):
SSI amount per month and payee:
SSDI amount per month and payee:
VA amount per month and payee:
Other (please specify):
9. Physician to be appointed (do not obtain the report until after court appointment)
(not applicable for temporary emergency guardianship):
10. Visitor to be appointed (do not obtain report until after court appointment) (not
applicable for temporary emergency guardianship):